

**CITY OF SHORELINE
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

APPELLANTS: Gayle Glass and Dwight & Joan Offer
Represented by: Lawler & Burroughs, P.C.

FILE NO: SHSP 96 011, 1996-00124

APPEALS: Appeal of Kohary Short Plat Preliminary Approval (See Exhibit A)

BACKGROUND INFORMATION:

A. Location and Neighborhood: The subject property is located at 19509 8th Avenue NW. The neighborhood consists of mainly larger single family residences on larger lots. The property to the South received a preliminary short plat for two lots through King County in 1994 and the Final Short Plat is currently under review by the City

B. The Project: The proposed project is a short subdivision of an existing 21,024 square foot parcel into three separate lots (Lot 1 - 5,200 square feet; Lot 2 - 5,200 square feet; Lot 3 - 7,812 square feet). Access to lots two and three will be provided by a separate access tract (Tract A) of 2,800 square feet in size over which there is an easement to the Glass property.

C. Comprehensive Plan and Zoning: The City of Shoreline Comprehensive Plan (Adopted 1994 King County Comprehensive Plan under Ordinance #10) indicates this property as Urban Medium with a range of 4 to 12 dwelling units per acre. The Zoning Classification is R-6, Urban Residential, with a base density of six dwelling units per acre.

D. Procedural History: The application was submitted on February 16, 1996 to the Development Services Group (DSG) of the City of Shoreline and public notice of the application was issued April 3, 1996. The DSG also requested additional information initially due July 12, 1996; however, there were numerous subsequent revisions and discussions. Public Comments were accepted until May 4, 1996 and eight comment letters were received. Preliminary approval, subject to conditions, was granted on April 30, 1997

E. Appeal: Gayle Glass and Dwight and Joan Offer, neighbors to the Kohary Short Plat, filed a timely appeal with the City Clerk's Office on May 13, 1997 objecting to the preliminary approval of the short plat by the Development Services Group, City of Shoreline. Their objection is that the City failed to adequately address in its decision the following three issues:

1. Road Standards;
2. Surface Water Management; and
3. Sewer Availability.

PUBLIC HEARING:

On June 18, 1997 the Hearing Examiner held an open record public hearing on the appeal. The hearing was opened at 7:00 p.m. in the Mount Rainier Room of the Shoreline Conference Center and was closed at 9:10 p.m. Participants at the public hearing and the exhibits offered and accepted are listed in this record. A verbatim recording of the hearing is available in the City Clerk's office. The file of hearing exhibits is available for public inspection in the office of the Development Services Group.

At the beginning of the Public Hearing the Hearing Examiner indicated that he have visited the site and driven through the immediate area. He noted that he had reviewed the application and the appeal letters. He reviewed the rules of procedure for the hearing.

Testimony was offered at the public hearing by the Development Services Group, City of Shoreline, as well as representatives of the appellant and the applicant. Testimony was taken under oath. Testimony which was offered is summarized in the following:

- Daniel Bretzke, Development Services Group, presented the staff report on the appeal. His report was structured to respond to the three issues contained in the appeal.

Road Standards: He noted that the DSG would now require 16 feet of paving in lieu of the 12 to 14 feet which was a condition on the preliminary approval. He noted that the Director of the Development Services Group had been designated by the City Manager to make the determination on variations to the road standards which meet the criteria.

Surface Water Management: It was noted that the language of two of the conditions was not clear in that the City had only done a preliminary review of the preliminary designs and that it was not approved as submitted, but subject to review and final approval. It was also noted that the individual infiltration pits must be reviewed and approved by the City Engineer.

Sewer Adequacy: It was noted that sewer service is provided by the Shoreline Wastewater Management District and that the condition included with the approval is the maximum extent of the City's authority.

Mr. Bretzke concluded that the City of Shoreline was satisfied that the proposed project could fulfill the engineering requirements of the code based on the review of the preliminary analysis and with the understanding that additional engineering analysis would be done by the applicant and would be reviewed and approved by the City.

He recommended modification of Condition 2 within the Surface Water Management Requirements and increasing the width of the paving of the joint use access tract to 16 feet (Improvements to 8th Avenue NW). He added a condition that all lots in the short plat will provide four off street parking spaces.

Mr. Lawler, attorney for the appellants, asked Mr. Bretzke questions regarding three issues:

- The first dealt with the rationale in deciding to recommend 16 feet of paving on the joint access drive. Mr. Lawler indicated that the standards would require a wider paved section.
- The second dealt with the procedures for granting variations from Road Standards such as whether an application was required or written record made of the decision.
- Finally, a series of questions dealing with the adequacy of the information provided and the standards to deal with the surface water conditions, particularly on Lot 3.

Mr. Bretzke responded to the questions; stating that they felt the 16 feet was adequate to serve 3 lots, particularly with more on-site parking; that any variation from the road standards is considered as part of the short plat review and approval process; and that the details of the drainage system are typically reviewed after preliminary approval, and that the information provided appeared to be adequate to make that decision. Mr. Jacobs objected stating that the level of detail sought by Mr. Lawler was beyond the normal scope of a preliminary short plat application and that the City had handled this application like all others.

Gayle Glass, appellant, expressed concern that:

- The width of pavement being required was inadequate; questioned who would maintain the driveway and wanted assurance that provision would be made to maintain her access to her property during construction.
- She has had ongoing problems with stormwater and that the development of this property would increase the potential run-off to her property. She stated she would like to see more testing and had retained Terra (Exhibit F) to look at the applicant's analysis.

Brian Lawler emphasized that the lack of adequate analysis of storm drainage made it premature to get a preliminary approval, particularly since the extent of drainage required on Lot 3 and the required setbacks would bring its viability into question. He recommended that the application be remanded to staff to do additional work and to then change the plat. He also felt that the joint use access should have 20 feet of paving to be in compliance with King County standards and that the road be sloped away from Glass's property to reduce potential run-off from the paved surface.

Gary Cooper, Agent for the Applicant explained that they have done a great deal more work on this preliminary approval. He showed the short plat (Exhibit G) to the south and indicated other land parcels could be subdivided and that the currently required row of trees and shrubs would then be removed from Tract B. He noted in summary that:

- They have a certificate of availability of Sewer from the Shoreline Wastewater Management District (Exhibit L).
- Road widths and processes are consistent with other plats on which he has worked in the City of Shoreline.
- Construction of the road and houses would be coordinated with Ms. Glass to assure she was not restricted from access to her property.
- He noted that they had done 6 more test holes related to the drainage problem and that information had been submitted to the City (Exhibit K).

Samuel M. Jacobs, Loucks and Lamb, attorneys representing the applicant, noted that although the amount of impervious surface will be increased, the road will be designed to remove the water which should actually improve Ms. Glass situation.

Brian E. Lawler noted that the additional testing was new information and that they would like the opportunity to review it.

Louis Danes, Registered Engineer for the applicant, explained the preliminary findings and design and explained that a separate system was used for the driveway impervious surface.

Mr. Offer asked where the water in the infiltration pits would flow? Mr. Danes responded that it went into the ground following natural drainage courses.

Mr. Kohary stated that the new homes would not be hooked into the existing Glass side sewer and that they would have to negotiate a road maintenance agreement with Ms. Glass. Mr. Jacobs noted that they could not make Ms. Glass participate in the maintenance but that at least the two lots would do it.

It was agreed that the appellant would have time to review the additional drainage tests and that the applicant would have time to respond to the Appellants Statement of Authorities. Each would also have time to respond to each other's comments. The hearing was held open administratively until June 26th for the first response and until July 2nd for the second response. It was noted that all information would be provided to the City Clerk's office, Hearing Examiner and the Appellant or Applicant by fax.

On June 20th, a request was received from Mr. Lawler asking for more time for their engineer to review the drainage test data. Mr. Jacobs objected on the basis that the information was not required for preliminary approval. On June 23rd, the Hearing Examiner allowed a one week extension for the initial review to July 3, 1997 and for the response to that information to July 9, 1997.

FINDINGS, CONCLUSIONS AND DECISION:

After reviewing the application, the Preliminary Approval with Conditions, the letter of appeal, considering all public testimony submitted in writing and by witnesses at the public hearing, and after viewing the subject property and its surroundings, the Hearing Examiner hereby enters the following Findings and Conclusions:

I. FINDINGS:

A. The primary issues related to this appeal are whether the City of Shoreline Development Services Group adequately considered road standards and procedures to grant variances, surface water management, and sewer adequacy in granting the preliminary approval of the Kohary Short Plat (SHSP 96011, File Number 1996 00124) for the subject property.

B. The rules of procedure adopted by the City of Shoreline for appeals to the Hearing Examiner place the burden on the appellant for establishing that the decision is not supported by the preponderance of the evidence.

C. The City of Shoreline (Chapter 12.10) has adopted by reference King County Code, Title 14 Roads and Bridges and in Chapter 12.10.020 has placed administrative responsibility with the Shoreline City Manager or designee. The designee for the review of Short Plats is the Director of the Development Services Group.

D. The City of Shoreline has established rules of procedure in Chapter 16.35.070 for Decisions made by the Director, the Criteria for Decisions and Appeal Authority. Table 1, Type A, Item 8 relates to Right-of-Way Use Permits. This section references Chapter 12.10 for the criteria and Ordinance 96 references K.C. Sec. 14.28.

E. The staff cites the intent of City Council in Ordinance #96 that multiple permits for land use decisions be integrated and decisions be made in a timely manner as the basis for processing variations from the road standards with the short plat.

E. The applicant has provided additional analysis - Soil Investigation and Percolation Test Report -of the infiltration capacities of the subject property (Exhibit K). The appellant's engineer has confirmed the results of the report; however they have raised the issue that the size of the infiltration pits in the preliminary design done by the applicant's engineer may be undersized.

F. The applicant has provided a Certificate of Sewer Availability (Exhibit L) and has testified that the new residences will not be hooked up to the existing side sewer.

II. CONCLUSIONS:

A. On the issue of the Appeal, the appellant has the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence. The appellant has identified three issues related to the adequacy of the staff's approval of the Preliminary Short Plat. It is concluded that additional information provided by the applicant at the public hearing, the modified conditions recommended by the staff, and the conditions added by the Hearing Examiner substantially address all issues.

B. The drainage information supplied with the application and supplemented at the public hearing provide adequate analysis for DSG to make a Preliminary Approval of the short plat application.

C. The Certificate of Availability of Sewers and testimony that the houses built in the short plat would not hook up to the existing side sewer address the issue of sewer availability.

D. The modification to require a sixteen (16) foot wide joint access paved driveway and parking for four (4) cars on each lot address the issues of access to the Glass property.

E. It is not clear from the testimony or a review of the City of Shoreline ordinance adopting King County Code Title 14, Bridges and Roads, and subsequent ordinances providing for general and administrative procedures for permit review, hearings and appeals that the City of Shoreline has established "detailed procedures" for the granting of a variance from road standards. There appears to be no written record that the criteria for granting such a variance have been met. It is clearly the intent of the City of Shoreline to consolidate and expedite permit review

F. The staff report, testimony provided by the staff and responses to questions at the public hearing related to the handling of the approval of the variation from the road standards indicated that the DSG staff in their Preliminary Approval of the Short Plat did, in fact, consider the public interest and the requirements for safety, function, fire protection, appearance and maintainability based on sound engineering

III. DECISION:

A. Based on the foregoing findings of facts and conclusions, the appeal of Gayle Glass and Dwight and Joan Offer is denied.

B. The conditions for Preliminary Approval (Staff Report, Exhibit B; Preliminary Approval, Attachment 2) of the Short Plat are confirmed as appropriate, except as modified below (insertions of language are underlined and deletions are crossed out.):

Surface Water Management Requirements (Page 18)

1. Improvements to the drainage system of the private road to be constructed ~~per~~ will be based on the submitted preliminary design by Louis Danes, PE. The final engineering drawings must be approved by the City Engineer before construction can begin. An easement shall be shown on the face of the plat in the location of the drainage infiltration pits. A note shall be shown on the face of the plat for all lots in the short plat sharing the maintenance of said private drainage infiltration pits.

2. Excavate a minimum of two additional soils logs, a minimum of four feet in depth, in the location of the proposed individual infiltration pits, for the new houses is required. Design The size of the infiltration system shall be in accordance with the adopted King County Surface Water Design Manual pits must be sized by an engineer based upon a soils test. The City Engineer will review and approve these plans before construction can begin.

Water and Sewer Adequacy (Page 19)

Sewer connection must be made to conform to Shoreline Wastewater Management's requirements for side sewer connections; however, none of the new homes will connect to the existing side sewer serving the Glass property. Contact the district for information on sewer connections and required easements.

Road Standards (Page 19)

Improvements to 8th Avenue NW

The paving width of the joint use access tract to serve the house shall be no less than ~~twelve (12)~~ sixteen (16) feet, ~~and it is recommended to install a 14 foot wide paving strip.~~

All lots in the subject short plat shall provide four off street parking spaces.

C. The Development Services Group will review the provisions within the adopted King Country road standards related to the granting of variances and take all appropriate actions necessary to assure they are met and appropriate approvals provided prior to any construction.

EXHIBITS:

The following exhibits were offered and entered into the record:

- | | |
|-----------|--|
| Exhibit A | Appeal of Kohary Short Plat
Filed with City Clerk on May 14, 1997
(Received in City Clerks Office on May 13, 1997)
Dated May 12, 1997 |
| Exhibit B | Staff Report to the Hearing Examiner
Submitted by Daniel Bretzke, Development Services
Group, City of Shoreline
Not dated - Received in City Clerks Office on June 13 |
| Exhibit C | King County Road Standards, Sec. 2.03 (Residential Access
Streets)
Submitted by Brian Lawler, Attorney for Glass & Offer |

Submission date: June 18,1997

- Exhibit D Application Form and Affidavit for short subdivision project for Miklos Kohary with attached time tracking sheet and land use log (from City file)
Submitted by Brian Lawler, Attorney for Glass & Offer
Submission date: June 18,1997
- Exhibit E Report regarding Short Plat Construction Plan for Miklos Kohary (from City File)
Submitted by Brian Lawler, Attorney for Glass & Offer
Submission date: June 18, 1997
- Exhibit F Letter from Paul K. Bonifaci, P.G., Engineering Geologist and Theodore J. Schepper, P.E., Principal Engineer, Terra Associates, Inc. dated November 1, 1997
Submitted by Brian Lawler, Attorney for Glass & Offer
Submission date: June 18,1997
- Exhibit G Map of the 3 lots
Submitted by Gary Cooper, Developer
Submission date: June 18,1997
- Exhibit H Shoreline Municipal Code, Chapter 12.10, Roads & Bridges
Submitted by Gary Cooper, Developer
Submission date: June 18, 1997
- Exhibit I King County Code (1.08) regarding variances
Submitted by Gary Cooper, Developer
Submission date: June 18, 1997
- Exhibit J King County Code, Section 14A2.060, Roads & Bridges
Submitted by Gary Cooper, Developer
Submission date: June 18,1997
- Exhibit K Soil Investigation and Percolation Test Report from Quality Drafting and Engineering Services dated June 6, 1997
Submitted by Samuel Jacobs, Attorney for M. Kohary
Submission date: June 18,1997
- Exhibit L King County Certificate of Sewer Availability,
Gary Cooper, applicant, dated February 14,1996
(from City file))
Submitted by Samuel Jacobs, Attorney for M. Kohary

Submission date: June 18,1997

- Exhibit M Letter to Hearing Examiner from Brian Lawler regarding
 Appellant's Statement of Authorities dated June 18, 1997
 Submitted by Brian Lawler, Attorney for Glass & Offer
 Submission date: June 18,1997
- Exhibit N Letter to Hearing Examiner from Brian Lawler regarding
 Request for Extension of Time dated June 20, 1997
 Faxed by Brian Lawler, Attorney for Glass & Offer
 Received on June 20,1997
- Exhibit O Letter to Hearing Examiner from Samuel Jacobs regarding
 Response to Request for Extension of Time dated June 23, 1997
 Faxed by Samuel Jacobs, Attorney for M. Kohary
 Received on June 23,1997
- Exhibit P Letter to Brian Lawler from Hearing Examiner regarding
 Extension of Time (not dated)
 Faxed by Robert G Burke, Hearing Examiner
 Received on June 24, 1997
- Exhibit Q Letter to Hearing Examiner from Samuel Jacobs regarding
 Applicant's Response to Appellant's Statement of Authorities
 dated July 3,1997, faxed by Samuel Jacobs, Attorney for M. Kohary
 Received on July 3, 1997
- Exhibit R Letter to Hearing Examiner from Brian Lawler regarding
 Submission of Response to Danes Storm Water Analysis
 dated July 3,1997
 Faxed by Brian Lawler, Attorney for Glass & Offer
 Received on July 3,1997
- Exhibit S Letter to Hearing Examiner from Brian Lawler regarding
 Reply to Applicant's Response to Appellants' Statement of
 Authorities dated July 8, 1997
 Faxed by Brian Lawler, Attorney for Glass & Offer
 Received on July 8,1997
- Exhibit T Letter to Hearing Examiner from Samuel Jacobs regarding
 Applicant's Response to Appellant's Statement of Authorities
 dated July 9,1997
 Faxed by Samuel Jacobs,, Attorney for M. Kohary

Received on July 9, 1997

PARTIES OF RECORD:

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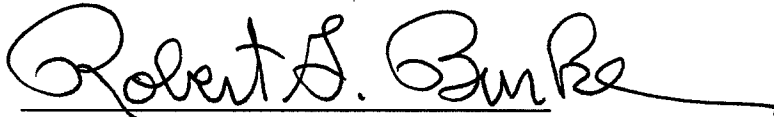
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Tim and Mary Obermiller
804 N.W. 195th Street
Shoreline, WA 98177

Entered this 23rd day of July, 1997. The decision of the Hearing Examiner shall be the final decision on any appeal.

A handwritten signature in black ink, reading "Robert G. Burke". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert G. Burke, Hearing Examiner

APPEAL OF HEARING EXAMINER'S DECISION;

Pursuant to Ch. 347 of 1995, Sec 705, this decision may be appealed by filing a land use petition in Superior Court and serving all persons entitled to service under 705 within 21 calendar days of the date the decision was mailed to the parties of record. At the end of the 21 day period, if no appeal has been filed, the decision of the Hearing Examiner shall become final and any appeal is thereafter barred. The last day for filing an appeal is August 13, 1997. The appeal must be filed with King County Superior Court, King County Clerk's Office, Room E-609, King County Courthouse, 516 Third Avenue, Seattle, Washington.